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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5334 of 1999

with

SPECIAL CIVIL APPLICATION No 7404 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESHKUMAR BHIKHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

Special Civil Application No.5334/1999

MR PM BHATT for Petitioners

MR PREMAL JOSHI, learned AGP for Respondent No.1

MR PJ VYAS for Respondent No. 4

MR PRANAV G DESAI for Respondent No. 6

Special Civil Application No.7404/1999

MR PREMAL JOSHI, learned AGP for Petitioners

MR PM BHATT for Respondent No.1 and 2

MR PJ VYAS for Respondent No. 3

RULE SERVED for Respondent No. 5

MR PRANAV G DESAI for Respondent No. 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /01/2001

C.A.V. JUDGEMENT

#. These two interconnected writ petitions are proposed to be disposed of by a common judgment.

#. Special Civil Application No.7404/99 has been filed by the State of Gujarat challenging the order dated 10-12-1998 Annexure-'B' passed by the Urban Land Ceiling Tribunal. In this petition, the averments are that the land holder Lalitaben Bhikhabhai had filled up Form under sec.6(1) of the Urban Land Ceiling and Regulation Act, 1976, which was scrutinized by the competent authority, and after giving opportunity of hearing, through its order dated 12-10-1984, the competent authority declared 2963 sq.meters of vacant land as surplus land vide Annexure-'A'. Proceedings under secs.10(1) and 10(5) of the Act were followed and possession of excess vacant land was taken by the petitioner on 14-11-1984. Possession was given voluntarily by the respondents. Compensation was awarded under sec.11 of the Act, which was received by the land holder. The excess land was of Survey No.38, and under sec.23 of the Act, the surplus land was allotted to 22 persons belonging to poor urban classes. Each person was given 25 sq.meters of land. An appeal was preferred by the respondents after about 14 years on 11-8-1998 from the date of the order of the competent authority. This delay of 14 years, according to the petitioner, was condoned by the Tribunal without giving any reason. Ultimately, the Tribunal allowed the appeal and set-aside the order of the competent authority dated 12-3-1984 through the impugned order dated 10-12-1998 Annexure-'B'. It is this order, which is under challenge in this petition. It is also stated in the petition that delay of few months occurred in filing the petition because of procedural delays. The prayer has, therefore, been made for quashing the aforesaid order.

#. Respondent nos.1 and 2 have filed counter affidavit pleading that the order of the Tribunal is perfectly justified and legal. It is also pleaded that, there has been undue delay in filing the writ petition, hence it deserves to be dismissed. Another plea is that, this petition has been filed as a counter-blast to earlier petition no.5334/99 filed by the respondents. The next

plea is that, because the respondent nos.1 and 2 were not parties to the main proceedings conducted by the competent authority, the time to file appeal under sec.33 will begin to run from the date the order is communicated, and that the order of the competent authority came to the notice of the respondents when they approached Talati for obtaining copy of Village Form No.7/12. It is also denied that, possession was taken from the respondents in accordance with law. Further it is denied that the respondents have received any compensation. It is also pleaded that, no notice under Rule-5(2)(ii) of Urban Land Ceiling Rules was served on the respondents, nor draft statement under sec.8(3) of the Act was served on them. As such, the Tribunal was justified in setting aside the impugned order of the competent authority and remanding the matter for fresh consideration by the competent authority.

#. Special Civil Application No.5334/99 has been filed by Rajeshbhai and Manojbhai against the respondents. In this petition, the petitioners have sought interpretation of secs.3(2)(a) and 3(2)(b) of the Repeal Act No.5 of 1999, so as to protect their interest in land Final Plot No.880 Area 2245 sq.meters and Final Plot No.381 Area 718 sq.meters. According to the petitioners of this case, Lalitaben Bhikhabhai filed a ceiling case in 1976 and upon her death, the said case was conducted by the respondent no.4 Jayaben Chhaganlal alone ignoring the rights of the petitioners. Lalitaben died on 6-1-1980. The competent authority also decided the case behind the back of the petitioner nos.1 and 2 ignoring the fact that Lalitaben had disclosed in Form No.6(1) that the petitioners had interest in the land in question vide Column No.14 of Annexure-'A'. The competent authority did not issue any notice to the petitioners and passed order on 12-3-1984. The petitioners came to know of the said order in the year 1998, and thereafter filed Appeal No.41 of 1998 before the Urban Land Ceiling Tribunal. The said order was challenged in the appeal. The appeal was allowed by the Tribunal on 10-12-1998 vide Annexure-'D', and after setting aside the order of the prescribed authority, the matter was remanded to him for fresh consideration, after hearing the petitioners of this writ petition. The judgment of the Tribunal was not challenged by the State Government, hence, in this petition, it is said that the said judgment has become final. It is alleged that the competent authority, respondent no.1 did not act in compliance of the direction of the Tribunal after the matter was remanded. The Urban Land Ceiling Act was repealed, which was adopted by the State of Gujarat on 30-3-1999. Since

nothing was done by the competent authority before the Act was repealed in compliance of the order of the Tribunal, the petitioners are entitled to restoration of possession, which was allegedly taken by the Government. Consequently, this petition was filed claiming writ of mandamus against the respondents.

#. Shri Premal Joshi, learned AGP for the petitioner in SCA No.7404/99 and Shri PM Bhatt for the respondent nos.1 & 2 and Shri PJ Vyas for the respondent no.3 were heard. Likewise, Shri PM Bhatt for the petitioner in SCA No.5334/99 and Shri PJ Vyas, Shri Premal Joshi and Shri Pranav G.Desai for the respondents were also heard.

#. It is proposed to take up SCA No.7404/99 first. In this petition, the order of the Urban Land Ceiling Tribunal has been challenged by the State of Gujarat firstly on the ground that the Tribunal was in error in condoning 14 years delay in filing the Appeal under sec.33 of the Act by the respondent nos.1 and 2. Secondly, the above order is also challenged on the ground that, the Tribunal has, without any material, quashed and set aside the order of the competent authority and has not properly considered the material on record. As against this, the objection of Shri PM Bhatt has been that, this writ petition itself suffers from the vice of latches, in as much as, it was filed after about nine months of the order of the Tribunal and no satisfactory explanation of delay has been given in the petition.

#. The objection of Shri PM Bhatt has substance. In para-5 of the petition, only this much is said that, the impugned judgment of the Tribunal alongwith the case papers had to be read by the higher officers of the Revenue Department and some time has been consumed in taking a decision to challenge the order passed at Annexure-'B'. The delay of few months has been caused in preferring this writ petition. This vague explanation does not state how much time was consumed in seeking legal advise and how the matter moved from one table to the other. The judgment of the Tribunal was delivered on 10-12-1998. It can not be said that the judgment of the Tribunal was not in the knowledge of the State Government, namely, the petitioner. The petition was, however, prepared in September 1999. It was affirmed on 1-9-1999 but, the petition is dated 24-9-1999 and it was filed in October 1999. Thus, this delay has not been explained in para-5 of the petition. Subsequently, an affidavit was filed by one Mr.MD Raval, Deputy Secretary, Revenue Department enclosing draft amendment. Draft

amendment hardly requires any affidavit. The draft amendment was not pressed, nor any orders were obtained. Consequently, it can not be presumed that at any stage the draft amendment was allowed by the Court. Consequently, whatever attempt was made in the draft amendment to explain the delay in filing the writ petition can not be accepted as sufficient explanation for delay in filing the writ petition. Whatever is stated in the draft amendment, firstly it can not be read because, it was not allowed. Secondly, even if, technical view is not taken regarding draft amendment, it seems that what is stated in the draft amendment, is nothing but an after thought. There is, thus, substance in the contention of Shri Bhatt that the petition suffers from the vice of latches.

#. It is also significant to mention that, it was well within the knowledge of the State Government that, the Urban Land Ceiling Repeal Bill of 1998 was already in existence and the Repeal Ordinance No.5 of 1999 came into force on 11-1-1999, still no effort was made to file the writ petition before the Repeal Act came into force. The Repeal Act was adopted by the State of Gujarat with effect from 30-3-1999, still no serious action was taken to prefer the writ petition challenging the impugned order before the Repeal Act was adopted by the State of Gujarat. Under sec.4 of the Repeal Act, 'All proceedings relating to any order made or purported to be made under the principle Act pending immediately before the commencement of this Ordinance, before any court, tribunal or other authority shall abate.' As such, the proceedings before the competent authority abated because, no action was taken by him in compliance of the orders of the Tribunal. The order of the Tribunal, in these circumstances, could not be challenged through the writ petition filed in October 1999.

#. It may also be mentioned that, through the impugned order the Tribunal has not shown any favour to the respondent nos.1 and 2 of Special Civil Application No.7404/1999. Even on merits, it can be said that the Tribunal was justified in allowing the appeal under sec.33 and condoning the delay in filing the appeal and also in setting aside the order of the competent authority and remanding the matter to the competent authority for fresh decision.

##. The contention of Shri Joshi has been that, the Tribunal has not given any reason for condoning 14 years delay in filing the appeal. From the judgment of the Tribunal, it appears that detailed reasons for

condonation of delay in filing the appeal have not been given. But, if the judgment of the Tribunal, as a whole is considered, it can be inferred that the Tribunal was justified in condoning the delay, no matter it was 14 years delay. Fourteen years delay by itself is not an alarming feature. Under sec.33 of the Urban Land Ceiling Act, 'Any person aggrieved by an order made by the competent authority under this Act, not being an order under sec.11 or an order under sub sec.(1) of sec.30, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed (hereinafter in this section referred to as the appellate authority).' The proviso to sec.33 provides that the appellate authority may entertain the appeal after the expiry of the said period of 30 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

##. Thus, from sec.33 read with proviso thereof, it is clear that the appeal can be filed by a person aggrieved from the order made by the competent authority. The appeal can be filed within 30 days from the date on which the order was communicated to the aggrieved party and not within 30 days from the date of the order of the competent authority. The proviso further prescribes that the appellate authority can condone the delay if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. If, these provisions are applied to the facts of the case before me, it can be safely said that the respondents were prevented by sufficient cause from filing the appeal within 30 days. It is undisputed fact that the order of the competent authority was not communicated to the respondent nos.1 and 2. The order of the competent authority was passed on 12-3-1984 and appeal was filed on 11-8-1998. The original land holder was Lalitaben, who died on 6-1-1980. After her death, proceedings were conducted by her daughter Jayaben. In Form No.6(1), filled by the land holder Lalitaben vide Annexures-'A' and 'B' of Special Civil Application No.5334/1999, it was mentioned by her in Column No.14 that, in addition to Lalitaben there were three more persons who were having interest in the land. Rajeshbhai and Manojbhai, the respondent nos.1 and 2 of Special Civil Application No.7404/1999 are shown in Column No.14 as persons having interest in the land. Still, at no point of time, notice was given by the prescribed authority to these two persons. Proceedings were conducted by Jayaben alone after the death of Lalitaben. She also concealed that these two persons, namely, Rajeshbhai and Manojbhai had

interest in the land. In not issuing notice under sec.8, the competent authority committed illegality and violation of sec.8 of the Act. Sec.8(3) of the Act provides that, the draft statement shall be served in such a manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within 30 days of the service thereof. The procedure how draft statement is to be prepared is prescribed under secs.8(1) and 8(2) of the Act. Rule 5 of Urban Land Ceiling Rules, 1976 also requires consideration at this stage. It provides under clause(1) that, every draft statement prepared under sub sec.(1) of sec.8 shall contain the particulars specified in Form-(III). Sub rule 2(a) of Rule 5 provides that, the draft statement shall be served together with the notice referred to in sub sec.(3) of sec.8 on ....

(1) The holder of the vacant lands;

(2) All other persons so far as may be known who have or are likely to have any claim to or interest in the ownership or possession or both of the vacant lands by sending the same by registered post addressed to the person concerned.

It is, thus, mandatory provision that the prescribed authority should have sent by registered post draft statement together with notice under sec.8(3) of the Act not only to the holder of the land but, also to all other persons so far as may be known who have or are likely to have any claim to or interest in the ownership or possession or both of the vacant lands. From Form No.6(1) filled by Lalitaben, it is crystal clear that the respondent nos.1 and 2 were shown to be persons interested in the land, which was subject matter of Form No.6(1). This form should have been and must have been examined and scrutinized by the competent authority, and such authority should have no difficulty in finding out that these two persons, namely, Rajeshbhai and Manojbhai were having interest in ownership and possession of the land. Consequently, if no notice was issued to them and no draft statement was issued to them, the impugned order of the prescribed authority becomes bad in the eyes of law.

##. It may also be mentioned that, notice under sec.8(3) was issued on 25-10-1982, whereas Lalitaben, the land holder expired on 6-1-1980. No attempt was made by the prescribed authority to ascertain who were the heirs of Lalitaben. The Tribunal has rightly observed that the competent authority simply relying upon the affidavit of Jayaben had decided to proceed in the matter excluding

the respondent nos.1 and 2, namely, Rajeshbhai and Manojbhai. The competent authority did not consider the statement dated 11-5-1998 given by Jayaben Chhaganlal Patel, wherein, she disclosed pedigree indicating that Lalitaben was the widow of Bhikhabhai Patel. She expired leaving behind Jayaben, Rajeshbhai and Manojbhai. The statement dated 5-11-1998 Annexure-'G' of Jayaben was also incorrectly interpreted by the competent authority.

##. It is, therefore, clear that the respondent nos.1 and 2 of Special Civil Application NO.5334/1999 had no knowledge of the proceedings before the competent authority, nor they were served with notice under sec.8(3) of the Act, nor the order of the competent authority was served on them. Consequently, they were prevented by sufficient cause in not preferring the appeal in time before the Tribunal. It has been stated by them that, very late in the year 1998 they came to know of the order of the Tribunal when they approached Talati in connection with mutation proceedings, and on knowing of the impugned order, they preferred appeal in the year 1998 vide Appeal No.41/98. In these circumstances, the time for filing the appeal will run from the date of the knowledge of the impugned order to the respondent nos.1 & 2 and not from the date of the order of the competent authority. Since the order of the competent authority was not communicated to the respondent nos.1 and 2, they were justified in filing the appeal after the said order came to their knowledge. In these circumstances, the Tribunal was justified in condoning the delay in filing the appeal and the Tribunal could have taken aid from the proviso to sec.33(1) of the Act.

##. In view of the above discussion, I do not find any force in the contention that the Tribunal was not justified in condoning the delay.

##. On merits also, the order of the Tribunal can not be assailed. Before the Tribunal, the respondent nos.1 and 2 filed copies of School Leaving Certificates Annexures-'E' and 'F' to show that they were entitled to one unit. This was considered by the Tribunal. The Tribunal also considered the statement of Jayaben and report of Talati Annexure-'G', and considering these materials, the Tribunal concluded that the matter requires reconsideration by the competent authority. The Tribunal was, therefore, of the opinion that the order of the competent authority dated 12-3-1984 is errorneous. Consequently, it was set aside and the case was remanded to the competent authority to proceed as discussed in the

judgment, and giving sufficient opportunity to the appellants for hearing and to produce reliable evidence and proper opportunity to verify the facts and merits of the case. This order, therefore, requires no interference. Consequently, I do not find any merit in Special Civil Application No.7040/99, which is required to be dismissed.

##. So far as Special Civil Application No.5334/99 is concerned, in view of the foregoing discussions and provisions of the Repeal Act, it has to be allowed. As pointed out earlier, the order of the Tribunal was passed on 10-12-1998. The matter was remanded to the competent authority for fresh consideration after giving opportunity of hearing and producing evidence to Rajeshbhai and Manojbhai. The competent authority did not take any action in view of the judgment of the Tribunal dated 10-12-1998. In the mean time, Urban Land Ceiling Act was repealed by the Ordinance of 1999. In view of sec.4 of the Repeal Act, all proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this Ordinance before any court, tribunal or any authority shall abate. The effect of abatement will be that, since the competent authority did not take any action consequent upon the remand order of the Tribunal, all proceedings will abate. Since the judgment of the competent authority was set aside and the matter was remanded, it will be deemed that fresh proceedings should have been taken by the competent authority, and even if, possession was taken prior to that by the State Government from Jayaben, it is of no consequence. Shri Joshi has, however, argued that since possession was taken and excess land was allotted to 22 persons belonging to poor classes, third party interest has been created, and since those persons were not impleaded, the petitioners of Special Civil Application No.5334/1999 are not entitled to any relief. In my opinion, this contention can not be accepted. The petitioners were not obliged to implead 22 persons to whom land was allotted by the State Government. The entire action of taking possession was not in accordance with law. Since the petitioners, namely, Rajeshbhai and Manojbhai were not heard by the competent authority, any order passed by the competent authority was not binding on them. It might be binding on Jayaben, and if she alone had delivered possession, such delivery of possession can not be considered as delivery of possession in accordance with law. Consequently, panchnama is not enough to render delivery of possession by Jayaben in accordance with law. Rajeshbhai and Manojbhai were not persons, who were

present at the time possession was delivered by Jayaben, nor they voluntarily gave possession to the State Government or to the person authorized by the State Government or to the competent authority. Consequently, such recovery of possession by the State Government is of no consequence.

##. Receipt of compensation by Jayaben is also of no consequence because, the petitioners, Rajeshbhai and Manojbhai were not paid any compensation, nor they received any compensation. Compensation was paid to Jayaben, who at one stage tried to refund the same but, it was not accepted, for which, Annexures-H/1 and H/2 can be referred.

##. The panchnama Annexure'I' does not show that the petitioners were present when possession was delivered by Jayaben.

##. Since the competent authority did not proceed to act in accordance with the judgment of the Tribunal dated 10-12-1998, and thereafter the Act was repealed with effect from 30-3-1998, it will be deemed that there was no declaration of surplus land. Consequently, the petitioners are entitled to restoration of possession of surplus land. The Special Civil Application No.5334/99 therefore succeeds.

##. In view of the aforesaid discussions, Special Civil Application No.7404/99 is dismissed with no order as to cost.

##. Special Civil Application No.5334/99 is hereby allowed with no order as to cost. The respondent nos.1 to 5 are directed to restore possession of land of Final Plot No.880 to the extent of 2245 sq.meters and also possession of land of Survey No.381 to the extent of 718 sq.meters to the petitioners within a period of one month from today. In case the area of land of aforesaid Final Plot No.880 and Survey No.381 can not be restored back to the petitioners in view of the subsequent allotment to 22 persons by the respondent nos.1 to 5, equal area of land in the same locality shall be given to the petitioners.

Dated : /1/2001. [D.C. Srivastava, J.]

/sakkaf

Request of Shri Premal Joshi, A.G.P. for staying the operation of the judgment for a week is refused because, one month's time for compliance has already been granted

in the judgment.

January 16, 2001. [D.C. Srivastava, J.]